.* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ Crl. Rev. Pet. No. 159 of 2000

Reserved on : July 31, 2007
Date of Decision : 3rd August, 2007

D. MALIK ….. PETITIONER
Through: Mr. S.D. Salwan Advocate
(Mr. Neeraj Chaudhary & Mr. Paras Khattar, Advocates, with him)

Vs.

STATE AND OTHERS ..... RESPONDENTS
Through Mr. Pawan Sharma, APP for the State;
Dr. Sarabjit Sharma, with Mr. Sumit Sharma, for R-2;
Mr. Kishan Nautiyal, for Respondent No. 3

CORAM:
Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat:

1. The petitioner is aggrieved by an order dated 6-11-1999 whereby the respondent-accused were discharged of the offences punishable under Section

341/506/34 Indian Penal Code.

2. The brief facts are that the petitioner complained to the Deputy Commissioner of Police (DCP) against the accused, Respondent Nos 2 and 3 (hereafter referred to as "the accused"). The complainant alleged that when, on 4:00 PM, on 18-5-1996, she was in the Old Rajinder Nagar Market, on the way to her house, the accused went near her, stopped their car, abused and threatened her. It was alleged that they also threatened her husband, tried to pressurize her to withdraw litigation filed against them. She alleged that they held out a threat of breaking her face and teeth, in case the demands were not complied with. They also allegedly threatened to kill her and the children in case she did not vacate the house occupied by her, which apparently they wanted to be vacated. She also alleged that the next day, i.e 19-5-1996, Smt. Indu Mutreja and her husband, Rakesh Mutreja, forced themselves into her house. Smt Mutreja caught hold of her by the hair, threatening that she should vacate the house by the month end, or face dire consequences. The complainant recorded another statement, on 17-6-1996. In this she alleged that the incident of 18th May, 1996 was witnessed by a scooterist Manjeet Singh.

3. After investigation, a report was filed under Section 173, Cr.P.C. which recommended to proceed against the accused. The trial court, after considering the records, including statements, and copies of various litigation between the parties,

discharged the accused.

4. Mr. Sushil Salwan, learned counsel contended that the trial court fell into error in discharging the accused. It was contended that there were sufficient materials to proceed and frame charges; the trial court conducted a meticulous examination of the record, as if it were hearing the case at the stage of trial. Learned counsel contended that inconsistencies and contradictions highlighted, in the course of the impugned order were too trivial for the court to discharge the accused, at that stage; they should have stood trial.

5. Dr. Sarabjit Sharma, learned counsel for one of the accused resisted the petition. He submitted that the impugned order is sound and requires no interference. He relied upon the reasoning in the impugned order and contended that the trial court was persuaded to discharge the accused, for three good and valid reasons. One, the discrepancy between the previous statement and complaint on the one hand, and the supplementary statement recorded later. In the former, the petitioner was categorical about the absence of any eyewitness. However, later she improved on the version, and sought to introduce the presence of an eyewitness. Two, the supplementary statement is silent about the incident of 19-5-1999. Three, the threat of killing the complainant, allegedly held out by the accused, does not find mention in her supplementary statement.

6. The impugned order has to a large extent, accepted the contention of the

accused. It *inter alia,* reads as follows:

> *"8. I find that there are material contradictions in the complaint filed by complainant Mrs. D. Malik dated 20.05.1996 and her supplementary statement recorded on 17.06.1996. First of all, in her supplementary statement dated 17.6.1996 complainant D. Malik does not state anything about the incident dated 19.05.1996. She has not stated anything regarding the role of accused Indu Mutreja and her husband Rakesh Mutreja. In her complainant she has made specific allegations against Indu Mutreja and Rakesh Mutreja that on 19.05.96 at 6.30 a.m both of them forcibly entered her house and Indu Mutreja caught hold of her heir and both of them threatened her to withdraw the case filed against brother of Indu Matreja and to vacate the house by the end of month. Complainant has not stated a word regarding the incident dated 19.05.96 in her supplementary statement recorded on 17.06.96 against Indu Mutreja and Rakesh Mutreja.*
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> *9. Secondly, in her complainant dated 20.05.96 she has specifically stated in para No.5 that no person was present at the spot when the incident took place. In her supplementary statement dated 17.06.1996 she has stated that one person Manjeet Singh was coming to Karolbagh on his scooter who has witnessed this incident and accused on seeing Manjeet Singh left the spot in a Maruti car. In view of the fact that complainant in her complaint dated 20.5.96 does not state about the presence of Manjeet Singh at the spot and on the other hand she has categorically stated that no public person was present at the spot when the incident took place. Thus presence of PW Manjeet Singh at the spot at the time of incident is doubtful. Lastly, complainant in her complaint dated 20.05.96 has stated that accused Gurvinder Singh and Ajay Malik threatened her to vacate the house by the end of month otherwise they would kill her and her children. nothing has been stated about this fact in the supplementary statement of complainant recorded*
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> *10. As discussed above, there are major contradictions in the complaint made by complainant Mrs. D. Malik on 20.05.96 and supplementary statement recorded on 17.6.90. These are not minor variations but major contradictions which make her statement untruthful and untrust worthy. This cast serious doubt*

on the happening of the occurrence. Testimony of complainant is wholly unreliable and unworthy of credit which make the story highly improbable."

7. It is now settled, that the court has the power to either accept or reject a final report under Section 173; the only condition is that the order should disclose application of mind, and cogent reasons for doing so. The Supreme Court, in *Gangadhar Janardhan Mhatre -vs- State of Maharastra* 2004 (7) SCC 768, held as follows:

"When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report."

8. The factual matrix indicated in the preceding part of this judgment shows that the complainant and the accused knew each other; they were disputants in courts, for possession of property. According to the complainant, the accused threatened her on 18-5-1996; the next day, there was another incident where two other accused threatened her. The common thread appears to be pressure to vacate the premises occupied by her. However, the court, after considering all the

materials, noticed significant discrepancies, regarding existence of an eyewitness, nature of the threats (in the first statement she alleged that the accused threatened to kill her and her children; later she did not mention it) and the nature of the incident (dated 19-5-1999 itself-that was not even mentioned in the subsequent supplementary statement).

9. It is an undisputed proposition of law that if the court is convinced that *prima facie* materials pointing to grave suspicion about involvement of accused in the commission of an offence exist, charges can be framed. Yet, equally, if the materials point to a discrepant story, where two views can reasonably be entertained, the accused has to receive the benefit of the view that favours his discharge (See *Dilawar Babu Kurane -vs- State of Maharastra* AIR 2002 SC 564).

10. I have carefully examined the records, the charge sheet, evidence placed on record and order of the trial court. The view taken by it accords with the rule in *Kurane's case,* in view of the two versions given by the complainant herself. Consequently, the impugned order cannot be termed as an impropriety or an order overlooking material facts or in error of law. For these reasons, the revision has to fail; it is dismissed, but without any order as to costs.

(S. RAVINDRA BHAT)

August 3, 2007 **JUDGE**